

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1886.02
COMPLAINT INVESTIGATOR:	Brian Simkins
DATE OF COMPLAINT:	March 7, 2002
DATE OF REPORT:	April 5, 2002
REQUEST FOR RECONSIDERATION:	yes/revised May 3, 2002
DATE OF CLOSURE:	May 20, 2002

COMPLAINT ISSUES:

Whether the MSD Lawrence Township violated:

511 IAC 7-27-7(a) by failing to implement Student A's individualized education program (IEP) for the 2001-2002 school year as written, specifically:

- a. failing to provide classroom adaptations (modified tests and assignments) per the May 31, 2001, IEP;
- b. failing to implement the behavioral intervention plan per the January 9, 2002, IEP; and
- c. failing to provide services of mental health therapist per the January 9, 2002, IEP.

511 IAC 7-23-1(p) by disclosing or otherwise allowing access to personally identifiable information without the parent's consent when asking a paraprofessional to deliver Student B's IEP to Student B's parents.

511 IAC 7-21-2(b) by failing to utilize a licensed teacher to provide instruction in a special education science class and utilizing a paraprofessional to provide the instruction.

FINDINGS OF FACT:

1. Student A (the Student) is fourteen years old and attends the local middle school (the "School"). The Student is eligible for special education and related services as a student with an emotional disability.
2. The Student's IEP dated May 31, 2001, indicates that the Student is to have certain classroom adaptations that include modified tests and assignments for all classes. The Complainant asserts that the School is not modifying tests and assignments, not providing extra time on tests, or having tests read to the Student. The IEP does not require that tests be read aloud to the Student. The Complainant was unable to identify specific instances in which a test, quiz, or an assignment was not modified. The School reports that the Student has always been given modified tests, which is a test with a limited number of choices on a multiple-choice test or the provision of a word bank on a written short answer test. Examples of several tests and quizzes indicate that modifications were made. The Student's teacher of record ("TOR") states that from the beginning of the school year until mid-October 2001, adaptations on tests for students with emotional disabilities were provided by the resource teacher. A concerted effort by the TOR to provide modified tests did not begin until mid-October 2001.

3. The Student did not have a formal behavioral intervention plan ("BIP") in place until January 9, 2002. The first intervention in the Student's BIP is the use of a daily note. This strategy was originally initiated with the IEP dated May 31, 2001, and it requires the Student's general education teachers to check off and/or make a note indicating positive behaviors. The note also includes a place for comments about areas for improvement. Since the beginning of the 2001-2002 school year, the daily notes were often not presented to the general education teachers by the Student nor signed by the Student's parent as required by the BIP. The BIP does not describe the responsibilities of the Student. The School states that a daily note is given to the Student every day, and it is the responsibility of the Student to have it checked by the Student's teachers and then have it signed by the Complainant. In addition, along with daily notes, the BIP describes other provisions for coordinating intervention efforts with the Student's parent such as phone calls and contact outside of school hours to discuss the Student's progress. The Complainant asserts that communication with the Student's teachers or the TOR was rarely done despite the fact that the Complainant worked in the school. The School states that because the Complainant worked in the school communication was easily accomplished.
4. In December 2001, the School sent a form letter to parents advising that the School was developing an expanded relationship with a local community mental health center. The services offered through the mental health center are independent of the school, although the mental health therapists work out of the School. The letter invited parents to obtain additional information and to refer a student to determine the need for mental health services. The Complainant referred Student A for services on December 19, 2001.
5. In the "Notes of Discussion" section of the CCC Report from the meeting convened on January 9, 2002, it states: "[The Student] will begin service with [local mental health center] therapists at [the School]. [The Student] will meet the therapist tomorrow." There is no other reference in the IEP reflecting the Student's need for or the provision of such services.
6. In November 2001, the Student's TOR prepared to send home Student B's re-evaluation summary for a parent signature by having Student B take it home. Student B is a student with a disability who participated in a special education resource room for the fall semester of the 2001-2002 school year and to whom the Complainant provided instructional assistance. Rather than mail the report, the Complainant volunteered to take it to Student B's parent, since they live in the same apartment building. The TOR reports she called Student B's father on November 16, 2001, to let him know that the summary report was coming home that day with the Complainant. According to the TOR, the father stated during a phone call that having the Complainant bring the paperwork home was acceptable. The paperwork was placed in a sealed envelope and it went home to the parent via the Complainant. The Complainant did not open the sealed envelope or otherwise access the information contained therein. The Complainant has a notarized letter written and signed by the parent, dated March 16, 2002, stating that the re-evaluation summary report was delivered to him by the Complainant but without his permission.
7. The Complainant asserts that she and other instructional assistants were often put in charge of supervising and providing instruction to students in a particular science class containing students with emotional disabilities. The School acknowledges that on two occasions, November 27 and 29, 2001, the Complainant and one other instructional assistant handled the class without the direct supervision of a licensed teacher. According to the TOR, the Complainant worked as an instructional assistant in this class from November 6, 2001, until December 3, 2001.

CONCLUSIONS:

1. Finding of Fact #2 indicates that Student A's IEP, dated May 31, 2001, requires that the Student's tests and assignments be modified in all class subjects. The resource teacher modified tests until mid-October of the 2001-2002 school year; the TOR assumed the responsibility for modifying the tests at that time.. Therefore, no violation of 511 IAC 7-27-7(a) is found regarding the failure to provide test modifications.
2. Finding of Fact #3 indicates that the Student has a BIP included in the IEP dated January 9, 2002. It also indicates that the portion of the BIP requiring the maintenance of daily notes is not being accomplished. As of this date, nothing has been done to remedy this situation. Therefore, a violation of 511 IAC 7-27-7(a) is found regarding the failure to implement the Student's BIP.
3. Findings of Fact #4 and #5 indicate that provision of mental health services is not required by Student A's IEP and addendum dated January 9, 2002. Although the discussion notes in the CCC Report refer to mental health services, the notes report only what the Complainant had previous undertaken on her own in accessing mental health services available to students through the local mental health center's therapists located at the School. No violation of 511 IAC 7-27-7(a) is found regarding mental health services.
4. Finding of Fact #6 indicates that the Complainant, while working as a special education instructional assistant, personally delivered a sealed envelope containing educational information on Student B to Student B's parent. There is no allegation that the Complainant opened the envelope or otherwise accessed the contents of the envelope. Further, as the Complainant was an employee of the School providing educational services to Student B. Therefore, no violation of 511 IAC 7-23-1(p) is found.
5. Finding of Fact #7 indicates that the School acknowledges that, on November 27 and 29, 2001, the Complainant and one other instructional assistant were in charge of a special education science class. On those two occasions, the instructional assistants were not under the direct supervision of a licensed teacher. Therefore, a violation of 511 IAC 7-21-2(b) is found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

MSD Lawrence Township shall:

1. Convene a CCC meeting no later than April 26, 2002, to:
 - a. The corrective action originally contained in 1(a) is rescinded.
 - b. more clearly describe staff, parent, and student responsibilities in implementing the interventions and strategies of the BIP; and
 - c. determine whether compensatory services are needed due to the lack of modified tests during the first two months of the 2001-2002 school year.
 The CCC Report/IEP shall be submitted to the Division no later than May 17, 2002.
2. Send a written reminder to all teachers of record regarding Teacher of Record responsibilities as detailed in 511 IAC 7-17-72, and especially, the responsibilities of monitoring the implementation of the students' IEPs and ensuring that adaptations, accommodations, supplementary aids and services are provided in accordance with students' IEPs. A copy of the written memo and an

assurance statement that the memo was sent to all teachers of record shall be submitted to the Division no later than May 17, 2002.

3. Send a written reminder to building administrators and teachers regarding the use of instructional assistants, specifically that instructional assistants may provide instructional assistance only under the direct supervision of a licensed teacher. A copy of the written memo and an assurance statement that the memo was sent to building administrators and teachers shall be submitted to the Division no later than May 17, 2002.